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Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

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OUTCOME OF PROCEEDINGS

of : Working Party on Aviation

on : 11 July 1996

No. prev. docs : 7557/96 AVIATION 10 PECOS 67 [SEC(96) 887] **RESTREINT**
6121/96 AVIATION 6 PECOS 42 **RESTREINT**

No. Cion prop. : 5506/95 AVIATION 3 PECOS 32 [SEC(95) 328 final] **RESTREINT**

Subject : Negotiations on air transport agreements between the Community and Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia

With a view to the meeting of the Aviation Group on 29 July 1996, delegations will find, attached, in Annex I, the negotiating directives for the above-mentioned negotiations as they stand following the meeting of the Aviation Group on 11 July 1996.

The Aviation Group welcomed the discussion paper drawn up by the Presidency ⁽¹⁾. While most delegations entered scrutiny reservations, there was broad agreement that:

- a proper balance between liberalisation and harmonization was essential, particularly in view of the general objective to integrate the air transport markets of the European Community with those of the Central and Eastern European countries (CEC's) mentioned above;

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⁽¹⁾ See Working doc. AER/96/9.

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- the achievement of the Community's safety standards was the most important precondition for liberalisation, while stating that the requirement of full membership of JAA in the early phases would be too strict;
- any transition to a higher level of integration would have to be based on a proposal from the Commission to the Council, thus ensuring adequate monitoring and control by the Council bodies.

Several delegations felt that:

- fifth freedom rights should not be part of the first stage of liberalisation;
- the checklist of subjects ⁽¹⁾, which indicates priorities in the negotiations, needed to be reviewed.

The Netherlands delegation acknowledged that the objective of concluding one multilateral agreement between the Community and the CEC's was very difficult to achieve. They stressed, however, that they clearly preferred agreements with a group or groups for CEC's rather than the conclusion of ten individual agreements. Other delegations expressed doubts about this approach.

The Aviation Group agreed that, with a view to the meeting on 29 July 1996, the Presidency will:

- redraft the general introduction of the negotiating directives in order to clearly outline the principles and objectives of the negotiations;
- amend the other parts of the negotiating directives in the light of the discussion held on 11 July 1996.

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⁽¹⁾ Working doc. AER/96/9, p. 6.

DISCUSSION PAPER DRAWN UP BY
THE PRESIDENCY

Negotiations on Air Transport Market Access Agreements between the European Community and Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia

1. Introduction

1.1. The proposed negotiating directives have been discussed in the Aviation Group on the 15.11.95, the 19.03.96, the 07.05.96 and on 11.07.96. The following text aims to take into account the various remarks at these discussions and to ensure that the mechanism of negotiation and the structure of any agreement are more clearly defined.

1.2. The following broad principles have been identified as being necessary to determine how the CEC's adapt to EU market conditions.

- ▶ There should be a phased approach to market liberalisation with each phase being conditional upon the progressive adoption by the Associated States of the 'acquis communautaire' particularly as regards EU standards in relation to technical, safety, environmental and other harmonisation areas.
- ▶ A certain minimum degree of harmonisation should be settled for the first phase with the final phase representing the full membership of the EU by the States concerned.
- ▶ The number of phases should be kept to a minimum so as to avoid over complex agreements.

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- ▶ Negotiations should at all times take account of progress made in negotiation with the CEC's in the other transport sectors and broad developments in their political relationship with the EU generally.
- 1.3. The Commission will be assisted in its negotiations by a special committee of representatives of Member States and main developments will be reported to the Council of Ministers on a regular basis.

NEGOTIATING DIRECTIVES

2. General objective

- 2.1. The overall objective of the negotiations is to integrate the air transport markets (both scheduled and non-scheduled) of the European Community with those of Bulgaria, the Czech Republic, Hungary, Poland, Romania, Slovakia, Estonia, Latvia, Lithuania and Slovenia, as part of the wider political commitment of these CEC's, in time, becoming members of the EU.
- 2.2. Preferably, this objective would be reached by the conclusion of one multilateral regime between the Community and the CEC's or a number of them. However, existing air transport services between the States concerned (CEC's) are governed by rules which, to a considerable extent, date back to the requirements of centrally planned economies. This makes it difficult to establish a genuine multilateral regime during the initial phases of air transport market integration. Therefore, interlocking bilateral agreements between the EU and the Associated States may have to be considered as an alternative. To facilitate progress, agreements between the European Community and a particular group or groups of CEC's might also be considered e.g. the Baltic States or Poland, Czech Republic, Slovakia and Hungary.

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- 2.3. The agreement(s) should be coherent with the regulatory regime in the Community and should create a framework which allows air carriers to operate in Europe with a maximum of flexibility on the basis of the same economic, commercial and competition rules.
- 2.4. This should be, after a gradual process, on the basis of full acceptance by the CEC's of the Community "acquis" on civil aviation.
- 2.5. So as to ensure a balance between liberalisation and harmonisation in the technical, safety, environmental and other areas, a phased approach is necessary, along the following lines:
- ▶ significant progress on liberalisation at each stage,
 - ▶ parallelism between liberalisation and harmonisation, particularly in relation to all aspects of safety which is vital for the success of this process
 - ▶ safeguards for ownership/control requirements so as to avoid third country carriers taking advantage of this process
 - ▶ A certain minimum standard of harmonisation to be guaranteed by the CEC's for the first phase, with third/fourth freedom rights being granted in return, and with the possibility of fifth freedom rights being available in some cases.
- 2.6. As was the case with the Community, a gradual liberalisation of market access and tariffs regimes, together with appropriate safeguards and phasing-in procedures are proposed in order to ensure a co-ordinated development and progressive liberalization and also in order to maintain a fair competitive situation.

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2.7. The aim is to arrive at a situation which corresponds to Community rules as soon as possible. A clear timetable for achieving such objectives must, therefore, be part of such initial agreements. Careful monitoring of developments and a regular review of progress must also be foreseen, particularly in relation to application of JAA standards.

2.8. As the agreement(s) will not necessarily lead to full liberalisation initially, some existing relations between Member States and the CEC's may, during a transitional period, be more liberal than the agreements envisaged. In such cases, special provisions are foreseen to ensure that where more liberal rules exist already, these rules will, subject to their conformity with Community law, prevail so as to avoid that more restrictive rules will be introduced than the ones that are applicable today. Such provisions were incorporated in the first and second aviation packages within the EU.

3. Relationship between agreements on market access and adaptation to Community legislation

3.1. As already stated in paragraph 2.5, any agreement has to be based on the identification of an appropriate balance between the extent of opening up aviation markets and progress made in relation to the implementation by States concerned of their obligation to adapt aviation legislation to the Community's air transport legislation. It is clear that full implementation of the Third Package rules would necessitate de facto full harmonisation and implementation of law in other areas.

3.2. In relation to parallelism, rules clearly related to market access (slots, computer reservation systems) and the Community's safety and noise standards merit specific attention. The extension of the Third Package rules requires equivalent technical and operational standards to those applied in the Community to be also

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effectively applied and enforced by the CEC's, particularly in the safety and environmental fields. The harmonisation of technical standards is very important particularly when fifth-freedom elements are part of the agreement on market access. Accordingly Member States must put in place very strict monitoring and enforcement arrangements for each step of the process.

3.3. Any initial agreement will also have to safeguard rules on effective control of air carriers eligible to access the markets in question. The spirit of Art. 4 of the Regulation No. 2407/92 has, therefore, to be part of any agreement. Third country interests should not be able to benefit from any intermediate arrangement.

4. The substantive content of the Agreement(s)

4.1. The agreement(s) should cover the following areas, on the basis of non-discrimination on grounds of nationality:

(1) Entitlement to provide services and to establish

Full market access is only ensured if it is also possible to own or establish an air carrier in any of the countries which are party to the agreement(s). At the very least, it is necessary to define, particularly in an initial agreement, the precise technical and economic preconditions for carrying out air services, as well as ownership/control requirements.

(2) Traffic Rights

Ultimately, all the freedoms of the air must be opened-up, ranging from the right to overfly to cabotage. This includes rules on related areas such as capacity and combination of points. Any limitation particularly as regards designation will have to take into account the needs of interested parties in the Community. In case of such limitations, complete opening-up of regional

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air services should be envisaged. Third and fourth freedom traffic rights should be part of any initial agreement while limitations on capacity and pricing of the type used in the first and second packages might be applied taking into account existing bilateral agreements. The extension of fifth freedom traffic rights between the EU and CEC's to some CEC's in the first phase might be possible, depending on progress made in the harmonisation area.

(3) Special conditions for regional services with small aircraft

The conditions for new entrants is one of the elements which has been recognised in the Community rules (Regulation 2408/92) on market access and on slot allocation. This is important for any air services to and from regions with a developing economy and should therefore be assured in a first phase.

[(4) Traffic distribution within airport systems

This right must be retained for Community Member States and is part of the harmonisation under the Europe agreements. However, it must be safeguarded from the outset that such rules cannot discriminate among air carriers.]⁽¹⁾

(5) Limits to the exercise of traffic rights

While a certain transitional period has been recognised in the Community rules and therefore might be granted to the CEC's, this should only be done on the basis of full reciprocity.

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⁽¹⁾ Scrutiny reservation by the French delegation.

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5.2. Implementation of agreements covering market access would as a general rule be preconditioned by effective enforcement of competition rules in the aviation sector. The need for supplementary rules in addition to the provisions of the Europe Agreements would be required in particular if air transportation between the States concerned is covered by means of genuinely multilateral arrangements or by means of interlocking bilateral agreements.

5.3. Appropriate rules will also have to be negotiated to ensure effective control of the application and efficient enforcement of the agreements themselves. Scope and substance of such rules will have to depend on the degree of liberalisation to be achieved but they have to include the possibility for Contracting Parties to take appropriate measures in case of disagreement and even unilateral action in extreme circumstances (e.g. predatory behaviour) if consensus cannot be reached. Furthermore, such rules will have to ensure the safeguarding of the roles of Community institutions in relation to interpretation of the Community acquis as well as the need for full transparency and consultation in areas of relevance for achieving the goals of the agreement(s). The move in any agreement to a higher level shall be based on a proposal from the Commission to the Council.

5.4. In the case of full adaption to the Community acquis, provisions on institutional integration will be necessary by a CEC or bloc of CEC's to ensure that the role of the Commission and the Court of Justice are appropriately catered for.

6. Special provisions

6.1. For the administration of each of the agreement(s), a specific Joint Committee, with representatives of both Parties, will be established. Notwithstanding the functions of the Association Council(s) as defined in the Association Agreement(s), these Committees should ensure the proper implementation of the

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agreements, monitor the development of the markets and ensure that carriers compete fairly and on equal terms. Where appropriate, the Committees should make use of the procedures under the Europe agreements as much as possible.

6.2. Where the agreement(s) cover air transport services between CEC's, implementing rules will have to ensure a clear definition of responsibilities of each Party and an effective implementation of the agreement(s) also in those circumstances. Furthermore, speedy and effective enforcement mechanisms applicable amongst all parties will be provided for with unilateral action being resorted to only in extreme circumstances and on the basis of proportionality.

6.3. Moreover, appropriate mechanisms should be included in the agreements for their adaptation to modifications of Community legislation and new Community rules.

7. Period of validity

7.1. The agreement(s) should be valid for X years and should be reviewed after five years, subject to any provisions agreed in the wider framework of the "Europe agreements" or in accession negotiations. However, this period should be shortened if, before the expiry of the five year period, a further step towards full market integration can be made. The review will be prepared in the Joint Committees.

8. Termination of the agreement(s)

8.1. Parties to the agreement(s) should be able to withdraw from the agreement after consulting the other party in advance and on giving due notice.

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CHECKLIST OF SUBJECTS

A. Subjects for the aviation agreements

- ▶ non discrimination on grounds of nationality (**first priority**)
- ▶ traffic rights (**1-4 freedoms, first priority**), (**5th freedom on a case by case basis**), (**7th freedom, second priority**) & (**8/9 freedoms, third priority**)
- ▶ **participation of air carriers (first)**
- ▶ entitlement to establish an air carrier (Right of establishment) (**third**)
- ▶ conditions for public service obligations both internationally and domestically (**second and third**)
- (^(*)) ▶ conditions for temporary exclusive concessions (**second**)
- (^(*)) ▶ special conditions for regional services with small aircraft (**first**)
- ▶ combination of services (**first**)
- ▶ traffic distribution within airport systems (**first**) (low priority for F)
- ▶ ground handling (**first**)
- ▶ exceptional circumstances limiting the exercise of traffic rights (**first**)
- ▶ exceptional circumstances limiting the capacity (**first**)
- (^(*)) ▶ conditions for disapproval of air fares (**first**)
- ▶ procedural provisions (**first**)
- ▶ consultation mechanism and rules in relation to the inclusion of future Community legislation (**first, as appropriate**)
- ▶ consultation mechanisms concerning relations with Third countries and international- organisations (**first**)

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(^(*)) These items are of low priority but could form an element in any of these phases.

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B. Important harmonization measures for aviation

- ▶ conditions for the granting of an operating licence **(first)**
- ▶ conditions for the leasing of aircraft as regards safety **(first)**
- ▶ conditions for public service obligations domestically **(third)**
- ▶ rules for Computer Reservation Systems **(first)**
- ▶ rules for denied boarding compensation **(first)**
- ▶ cooperation and assistance in the field of air accident investigation **(first)**
- ▶ rules on limiting noise emissions **(first)**
- ▶ rules for the allocation of slots at congested airports **(second)**
- ▶ rules on the mutual acceptance of personnel licences **(first)** ⁽¹⁾
- ▶ **rules on the procurement of air traffic management equipment and systems (first)**
- ▶ **application of Joint Aviation Requirements and a commitment for early membership of JAA (first)**
- ▶ **a commitment to early Membership of Eurocontrol (first)**

This checklist is not necessarily exhaustive.

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⁽¹⁾ Doubts raised by I.

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CHECKLIST OF SUBJECTS

A. Subjects for the aviation agreements

- ▶ non discrimination on grounds of nationality (**first priority**)
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- ▶ **participation of air carriers (first)**
- ▶ entitlement to establish an air carrier (Right of establishment) (**third**)
- ▶ conditions for public service obligations both internationally and domestically (**second and third**)
- (^(*)) ▶ conditions for temporary exclusive concessions (**second**)
- (^(*)) ▶ special conditions for regional services with small aircraft (**first**)
- ▶ combination of services (**first**)
- ▶ traffic distribution within airport systems (**first**) (low priority for F)
- ▶ ground handling (**first**)
- ▶ exceptional circumstances limiting the exercise of traffic rights (**first**)
- ▶ exceptional circumstances limiting the capacity (**first**)
- (^(*)) ▶ conditions for disapproval of air fares (**first**)
- ▶ procedural provisions (**first**)
- ▶ consultation mechanism and rules in relation to the inclusion of future Community legislation (**first, as appropriate**)
- ▶ consultation mechanisms concerning relations with Third countries and international- organisations (**first**)

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- ▶ rules for Computer Reservation Systems **(first)**
- ▶ rules for denied boarding compensation **(first)**
- ▶ cooperation and assistance in the field of air accident investigation **(first)**
- ▶ rules on limiting noise emissions **(first)**
- ▶ rules for the allocation of slots at congested airports **(second)**
- ▶ rules on the mutual acceptance of personnel licences **(first)** ⁽¹⁾
- ▶ **rules on the procurement of air traffic management equipment and systems (first)**
- ▶ **application of Joint Aviation Requirements and a commitment for early membership of JAA (first)**
- ▶ **a commitment to early Membership of Eurocontrol (first)**

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⁽¹⁾ Doubts raised by I.